

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF and APPELLEE, VS. MADRIGAL TORINO, DEFENDANT and APPELLANT.*G.R. Nos. L-18767 & L-18789-90. May 30, 1964*

Ponente: BAUTISTA ANGELO, J.

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Madrigal Torino, together with others who are still at large, were accused before the Court of First Instance of Zamboanga del Norte of three separate crimes, namely, (1) robbery in band with homicide (Criminal Case No. 3111), (2) robbery (Criminal Case No. 3138), and (3) robbery in band with serious physical injuries (Criminal Case No. 3268). While these offenses were committed on different dates against different persons, necessitating separate trials, however, since the defendant made use of the same defense in all of them, the court a quo deemed it proper to hand down only one consolidated decision. Following the same pattern, we are now rendering the instant joint decision.

In Criminal Case No. 3111, the court a quo sentenced the accused Madrigal Torino to suffer reclusion perpetua, computed at 30 years, with all the accessories of the law, to indemnify the spouses Pio Ching and Eustiquia Dawat in the sum of P550.00, and the heirs of the deceased Alfredo Ocao in the sum of P5,000.00, without subsidiary imprisonment in case of insolvency, and to pay one-sixth (1/6) of the costs.

In Criminal Case No. 3268, Torino was also sentenced to an indeterminate imprisonment of from 4 years 2 months and 1 day of prision correccional, as minimum, to 12 years 5 months and 11 days of prision mayor, as maximum, with all the accessories of the law, to indemnify the spouses Demas Agad and Francisca Busca in the sum of P430.00, without subsidiary imprisonment in case of insolvency, and to pay one-eighth (1/8) of the costs.

In Criminal Case No. 3138, Torino was likewise sentenced to an indeterminate imprisonment of 4 months and 1 day of arresto mayor, as minimum, to 6 years 1 month and 11 days of prision mayor, as maximum, to indemnify Isidra Velez in the sum of P1,450.00, and Isidra Velez and Juanita Galocino in the sum of P385.00, without subsidiary imprisonment in case of insolvency, and to pay one-half (1/2) of the costs.

The above penalties were imposed with the understanding that their maximum duration shall not exceed 40 years.

Torino interposed the present appeal.

CRIMINAL CASE NO. 3111

In the afternoon of October 7, 1959, at about three o'clock, Pio Ching and his family were inside their house at barrio Napuyan, New Piñan, Zamboanga del Norte. After his wife and sister-in-law had eaten their evening meal, Pio went to the kitchen to feed the dogs. As he opened the kitchen door three persons, one of whom was Madrigal Torino, pushed him back inside, followed by another group of three persons. All these persons were armed either with firearms or bolos. Pio's hands were tied behind his back and was brought down to his bodega. Two of them were left to watch Pio, while Madrigal and the rest went to the house. Madrigal then demanded money from the

wife, while his confederates ransacked the store of assorted merchandise with a value of P100.00, more or less, after which Madrigal ordered the wife to go upstairs. Madrigal and his cohorts followed and spying a trunk they forced it open. Finding it without money, Madrigal aimed his gun at the wife who, fearing for her life, surrendered P450.00 to Madrigal, the proceeds from a copra deal consummated that afternoon. Pio was then escorted upstairs and the group asked for his gun. Pio replied that he did not have any. At that precise moment, the people in the house heard a voice emanating from the ground floor saving: "Here are the robbers who are stealers of chicken, they are stealing chicken from Pio!" The wife recognized the voice to be that of Alfredo Ocao, a neighbor. Madrigal and his group rushed down the stairs to lug the assorted merchandise they took from the store. After doing this the couple heard shots. The wife immediately went downstairs, closed the door of the kitchen, and went back upstairs to untie Pio. She started shouting for help, which brought back the robbers, who tried to break down the kitchen door. The couple, together with Pio's sister-in-law, sneaked out thru an exit in the store. They all ran to the house of Diego Martillano whom Pio requested to accompany him back to their house. Diego and Pablo Martillano, together with some other people, went with Pio to his house and on the way they found Alfredo Ocao sprawled dead near some banana plants. The body of Ocao was found to have received three incised wounds and one bullet wound, two of them fatal. Pio immediately reported the robbery to the police authorities at New Piñan.

CRIMINAL CASE NO. 3138

On November 6, 1959, at about two o'clock in the afternoon, Isidra Velez was sitting by the window of her kitchen at barrio Mauswagan, La Libertad, Zamboanga del Norte, when suddenly Madrigal Torino, who is outside the window, grasped her left hand. Madrigal was wearing a buri hat and his face was covered by a handkerchief. Madrigal and his companion climbed over the window after which they took Isidra upstairs where her grandchildren were at the time. When the children saw the robbers, they jumped out of the window and ran, but Madrigal pursued them and herded them back to the house. Madrigal pointed his gun at Isidra and demanded money. Isidra, who was frightened, gave her money amounting to P1,450.00. Madrigal and his companion also ransacked a trunk, took dresses from the same, and bundled them. As Madrigal and his companion were about to leave, Isidra's daughter-in-law, Juanita, with Marcelina Mangubat, arrived from the market. Juanita called for her children to open the door but nobody heeded, Juanita then called for her mother who answered in a very low voice. Alarmed, Juanita this time called for her son Charles who came down and opened the door. Juanita asked her son whether there was anybody inside the house, to which Charles answered in the negative, while keeping his eyes focused on the door. Then Madrigal Torino, with a bundle slung over his shoulder and carrying a gun, came down the stairs. Juanita and Marcelina Mangubat fled and ran to a house where they requested the tenants to call the police authorities and to inform her husband who was in a neighboring barrio of what has happened. When the authorities came to the house, they discovered that the robbers carted away household effects valued at P385.00, aside from the P1,450.00 cash taken from Isidra.

CRIMINAL CASE NO. 3268

In the afternoon of September 22, 1959, at about three o'clock, while Francisca Busca, her husband Demas Agad, and their daughter Jovita were at the yard of their house at barrio Disen, New Piñan, Zamboanga del Norte, four men approached them who informed Francisca that they lost a male and a female carabao. They identified one of them as Madrigal Torino. They accused the Busca family of slaughtering their lost carabaos the meat of which was allegedly hanging in their kitchen. Francisca denied the accusation. She was told to go inside the house, and upon entering the same, she saw four more persons inside. The eight were all armed either with pistols or bolos. Francisca, her husband and their daughter, together with Jovencio Agad who went there to deliver a can of salmon and salted fish, were all tied, and after firing a shot, Madrigal demanded money from them. One of the robbers also hit the back and nose of the husband with the butt of a pistol. When Francisca told Madrigal that they had no

money, the band forced open two trunks and took there from jewelry, clothing and other household effects, all valued at P430.00. The robbers stayed inside the house until sunset after which they left with their loot.

* * *

The defense of appellant in the three offenses imputed to him consists merely in an alibi. He testified that he fled to barrio Sapad, Kapatagan, Lanao on September 1, 1959 to escape from the wrath of his brothers Ricarte and Bienvenido who had sworn to kill him for having reported them as the killers of their father. He said that at about eight o'clock in the evening of June 13, 1959, in barrio Sipawon, Rizal, Zamboanga del Norte, his father was shot to death by his brother Bienvenido; that his brother Ricarte was also present when his father was killed; that he immediately reported the killing of his father to the police authorities at Rizal, Zamboanga del Norte; that because of his report his brothers surrendered to the police authorities; that while Ricarte and Bienvenido were incarcerated, they told appellant that they would kill him; that Bienvenido and Ricarte were able to escape from jail; that when he learned of their escape, he sought refuge at the house of his cousin at Mapang; that in the months of July and August, 1959, he hid in the house of a friend about a kilometer from his house in barrio Sipawon; that on September 1, 1959, he left for barrio Sapad, Kapatagan, Lanao where his married sister had a farm; that, he informed his sister and brother-in-law that his brothers Bienvenido and Ricarte had escaped from jail and planned to kill him; that he tilled the land of his brother-in-law from September to December 21, 1959 when he was apprehended by Sgts. Vergara and Mutya while on his way to the farm; that he was taken to the PC headquarters at Ozamis City where he was mauled by the troopers; and that the following morning he was taken to the PC headquarters at barrio Sicayab, Dipolog.

His defense of alibi was supported by Timoteo Nies and Sergio Pardilio, both farmers and residents of Kapatagan.

* * *

Since the defense of appellant is simply that he was at another place and could not have possibly committed the crimes imputed to him, the only issue to be determined hinges on his identification on the part of the robbery victims and their witnesses. In this respect, we are satisfied that the evidence on record sufficiently identifies appellant as one of the male factors.

Thus, in Criminal Case No. 3111, appellant was identified by Pio Ching and his wife Eustiquia Dawat not only because he was not wearing any mask at the time but also because their house was lighted by a Petromax lamp, and it was Eustiquia who handed the money to him. Indeed, they pointed to appellant as a member of the band who robbed them when they were brought to the PC headquarters to identify him. The fact that witness Pablo Martillano, a neighbor of appellant, recanted his testimony in an affidavit he later executed while confined in Muntinglupa, can not nullify the identification made of appellant by the witnesses of the prosecution, for it has been held that an affidavit of recantation made by a witness after the conviction of the accused is unreliable and deserves scant consideration.[1] This is more so when the testimony of Martillano is merely corroborative because the identity of appellant has been sufficiently established by other worthy witnesses.

In Criminal Case No. 3138, the same situation obtains Appellant has also been sufficiently identified as one of the culprits by Isidra Velez, Nita Velez and Juanita Galocino de Velez who were all present at the scene of the crime even if appellant was at the time wearing a mask which covered his face up to the level of his eyes. These witnesses were able to recognize him despite this mask because they knew him well since they were either his neighbors or his old acquaintances. In fact, Isidra Velez knew appellant since he was a kid because they were neighbors and had more than one occasion to hear his voice as well as to observe his build, height and facial appearance. She was positive that the one who herded and robbed them was appellant considering his voice and physical appearance. Nita Velez, a child 11 years old, also recognized the accused because he used to pass by

their house whenever he went to market in barrio Boboringan. Her mother, Juanita Galocino de Velez, also was positive in recognizing him because they were neighbors and on the occasion of the robbery his hat was raised when the bundle he was carrying got entangled with the shutter of the door.

The defense makes capital of the fact that when the authorities went to the house of the victims to investigate the Velez family never mentioned the name of Madrigal as one of the robbers. But this, shortcoming can easily be explained by the fact that they were afraid of possible reprisal by Madrigal, but after he had been arrested by the authorities, they readily identified him.

The same thing may be said with regard to Criminal Case No. 3268. Thus, appellant was sufficiently identified by Francisca Busca and Jovencio Agad who had had ample opportunity to observe him because the robbery occurred at three o'clock in the afternoon and the robbers stayed in the house until sunset. As a matter of fact, Jovencio Agad declared in his affidavit that, although he did not personally know the robbers, he would however be able to recognize them if they are shown to him, and on the witness stand he readily pointed to appellant as one of the male factors. He also identified him at the PC headquarters.

In this connection, the defense quotes a portion of the affidavit of Francisca Busca to prove that she cannot identify the persons who came to her house. Thus, the defense has quoted the following as allegedly said by her: "If I happen to meet, I could not remember faces because at the time I was afraid and besides two of them wore masks." A careful perusal of Exhibit 1, however, does not reveal such statement attributed to Francisca which would cast doubt on her identification of appellant. Her actual statement was: "I could not remember maybe because at the time I was so afraid and besides two of them wore masks," which has an entirely different connotation from the portion quoted by the defense. In the latter quotation, Francisca merely stated that she was uncertain whether she would be able to identify any of the robbers, but was able to identify Madrigal when presented to her at the PC headquarters. Francisca again pointed to Madrigal as the person who was always following her during the robbery.

It, therefore, appears that the defense of alibi of appellant deserves scant consideration in the face of the positive and unwavering testimony of the prosecution witnesses who pointed to him as one of the malefactors. The rule is well-settled that the defense of alibi cannot be entertained when the identification of the accused has been sufficiently established by a number of worthy witnesses. This is more so when there is nothing in the record to show any motive why the prosecution witnesses would impute to appellant the commission of so grave a wrong as the one imputed to him.

With regard to the testimony of Timoteo Nies and Sergio Pardillo who attempted to substantiate the defense of alibi of appellant, we are impressed by the refutation made of such testimony by the government in its brief. We fully agree with its views on the matter.

The court a quo found in Criminal Case No. 3111 that the crime was committed by a band with homicide which falls under subdivision 1 of Article 294 of the Revised Penal Code, but failed to consider the commission of the act by a band as an aggravating circumstance, which would make the same penalized with capital punishment.[2] However, for lack of the requisite number of votes, the Court decided to affirm the penalty imposed by the court a quo for this crime.

Again, the court a quo in Criminal Case No. 3268 found appellant guilty of robbery in band with serious physical injuries under subdivision 4, Article 294 of the Penal Code, when it should fall under subdivision 5 of the same article, as pointed out by counsel de oficio. There being no mitigating circumstance to be considered, and the crime having been committed by a band, the imposable penalty should be the one prescribed in subdivision 5 of Article 294 in its maximum degree, or prision mayor in its medium period. Applying the Indeterminate Sentence

Law, appellant should be sentenced to an indeterminate penalty of 6 years and 1 day, as minimum, to 10 years, as maximum, both of prision mayor.

With the modification as above indicated with regard to the penalty to be imposed in Criminal Case No. 3268, the decision appealed from is affirmed in all other respects, with costs against appellant.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes and Makalintal, JJ., concur.

[1] People vs. Manigbas, et al., 109 Phil., 469; People vs. Tiongson, et al., L-15201-02, October 31, 1962.

[2] People vs. Casunuran, L-7654, August 16, 1956.

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